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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,736	09/09/2003	Alan Shluzas	1291.1138101	3377

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CROMPTON, SEAGER & TUFTE, LLC
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EXAMINER

WOODALL, NICHOLAS W

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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11/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/658,736	Applicant(s) SHLUZAS ET AL.	
	Examiner Nicholas Woodall	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/05/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 09/18/2007.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathews (U.S. Patent 6,033,406) in view of Luque (U.S. Patent 4,790,297) and Foley (U.S. Patent 5,792,044) and Davison (U.S. Publication 2001/0011170).

Regarding claims 20, 24, 28, and 29, Mathews discloses a method of treating the spine via a posterior approach comprising placing a fusion device, i.e. a bone graft, in an intervertebral space between a first and second vertebrae and placing a bone growth material, i.e. osteoinductive proteins or morphogenic proteins, on the fusion device inserted into the intervertebral disc space. Mathews fails to disclose the method including the step of performing a two level fixation procedure spanning two intervertebral spaces between three vertebrae, advancing a decompression tool into the surgical site to perform a decompression procedure, i.e. a laminectomy and facetectomy, on the vertebrae, and inserting an access device in a first configuration through an incision of the skin until a distal portion is located adjacent the spine, actuating the access device to a second configuration having an enlarged cross-sectional area at the distal portion spanning at least a portion of the first, second, and

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third vertebrae, and performing the surgical procedures through the access device.

Luque teaches a method comprising the steps of performing a two level fixation procedure in order to fix multiple joints of the spine together. Foley teaches a method comprising the step of inserting a decompression tool into the surgical site to perform a decompression procedure on the vertebrae in order to reduce pressure on the spinal cord. Davison teaches a method comprising the steps of inserting an access device in a first configuration through an incision of the skin until a distal portion is located adjacent the spine, actuating the access device to a second configuration having an enlarged cross-sectional area at the distal portion spanning at least a portion of the first, second, and third vertebrae, and performing various surgical procedures, such as decompression and fixation procedures, through the access device in order to provide a larger working area while reducing the amount of trauma experienced by the patient. It would have been obvious to one having ordinary skill in the art at the time the invention was made to perform the method of Mathews further comprising the step of performing a two level fixation procedure in view of Luque, the step of inserting a decompression tool into a surgical site to perform a decompression procedure on the vertebrae in view of Foley, and the steps of inserting an access device in a first configuration through an incision of the skin until a distal portion is located adjacent the spine, actuating the access device to a second configuration having an enlarged cross-sectional area at the distal portion spanning at least a portion of the first, second, and third vertebrae, and performing various surgical procedures, such as decompression and fixation procedures, through the access device in view of Davison in order to fix multiple joints

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of the spine together, to reduce the pressure on the spinal cord, and to provide a larger working area while reducing the amount of trauma experienced by the patient.

Response to Arguments

4. Applicant's arguments, see page 6 lines 17-21, filed 09/18/2007, with respect to the rejection(s) of claim(s) 20-29 under 35 U.S.C. 103(a) have been fully considered and are persuasive. The examiner agrees that Mathews fails to disclose a method comprising the steps of performing a multilevel fixation of multiple vertebrae. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Luque (U.S. Patent 4,790,297). The examiner believes that Mathews modified by Luque and Foley and Davison disclose the method steps of the current application as discussed above. The examiner has presented new grounds of rejection not necessitated by amendment making this office action non-final.

Conclusion

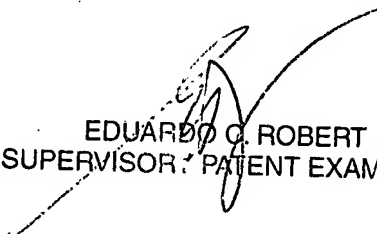
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT
SUPERVISOR, PATENT EXAMINER